

## 16A C.J.S. Constitutional Law § 789

Corpus Juris Secundum | February 2021 Update

### Constitutional Law

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### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

#### IX. Personal, Civil, and Political Rights and Freedoms

##### C. Personal Liberty

###### 3. Right to Travel

###### a. In General

## § 789. Limitations and restrictions on right

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### West's Key Number Digest

West's Key Number Digest, Constitutional Law  1280 to 1282, 1285 to 1288

**The right to travel is not absolute but rather is subject to reasonable regulation.**

Not all state action affecting interstate movement penalizes the right to travel<sup>1</sup> as individuals are protected only from those statutes, rules, and regulations that unreasonably burden or restrict the right to travel.<sup>2</sup> The right to travel is subject to reasonable regulation<sup>3</sup> as to time and place.<sup>4</sup> There is no right to travel for illicit purposes.<sup>5</sup> In an emergency situation, the right to travel may be temporarily limited or suspended.<sup>6</sup> Burdens on a single mode of transportation do not implicate the right to interstate travel<sup>7</sup> as an individual has no fundamental right to use any particular means of transportation.<sup>8</sup>

The right to travel may be qualified by the state as a consequence of the commission of, and conviction for, a crime.<sup>9</sup> A person who has committed an offense punishable by imprisonment has only a qualified right to leave

the jurisdiction prior to arrest or conviction.<sup>10</sup> A probationer has no constitutional entitlement to travel, so that a state's enforcement of a policy that curtails the right of probationers to travel does not violate their constitutional rights,<sup>11</sup> assuming that the restrictions are reasonably necessary to further a legitimate governmental interest,<sup>12</sup> and not excessive.<sup>13</sup> Similarly, parolees' right to travel is extinguished for the entire balance of their sentences.<sup>14</sup>

The constitutional right to travel does not require that a person who travels to another jurisdiction be given benefits superior to those enjoyed by its other residents if the newcomer enjoyed those benefits in another place<sup>15</sup> and does not destroy the independent power of each state to enact statutes uniformly applicable to all of its residents.<sup>16</sup>

The right to travel is not contravened when the State enacts and enforces reasonable regulations to promote safety.<sup>17</sup> The right to travel on public streets may be regulated as to time and manner of its exercise when deemed necessary to public safety.<sup>18</sup>

The freedom to travel abroad is a relative right that may be limited in certain situations<sup>19</sup> and is subject to reasonable governmental regulation.<sup>20</sup> This freedom is subordinate to national security and foreign policy considerations.<sup>21</sup>

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Footnotes

- 1 Idaho—Miller v. Stauffer Chemical Co., 99 Idaho 299, 581 P.2d 345 (1978).
- 2 **Registration check on out-of-state license plate not unreasonable burden**  
U.S.—U.S. v. Walraven, 892 F.2d 972 (10th Cir. 1989).
- 3 U.S.—Navis v. Henry, 456 F. Supp. 99 (E.D. Va. 1978).  
Idaho—State v. Wilder, 138 Idaho 644, 67 P.3d 839 (Ct. App. 2003).  
Ky.—Bess v. Bracken County Fiscal Court, 210 S.W.3d 177 (Ky. Ct. App. 2006).  
Me.—State v. Elliott, 2010 ME 3, 987 A.2d 513 (Me. 2010).  
Tex.—Ex parte Robinson, 80 S.W.3d 709 (Tex. App. Houston 1st Dist. 2002), petition for discretionary review granted, (Nov. 20, 2002) and judgment aff'd, 116 S.W.3d 794 (Tex. Crim. App. 2003).
- 4 U.S.—U.S. v. Chalk, 441 F.2d 1277 (4th Cir. 1971); American Civil Liberties Union of West Tennessee, Inc. v. Chandler, 458 F. Supp. 456 (W.D. Tenn. 1978).
- 5 U.S.—U.S. v. Brockdorff, 992 F. Supp. 22 (D.D.C. 1997); U.S. v. Schneider, 817 F. Supp. 2d 586, 86 Fed. R. Evid. Serv. 821 (E.D. Pa. 2011); U.S. v. Bredimus, 234 F. Supp. 2d 639 (N.D. Tex. 2002), aff'd, 352 F.3d 200 (5th Cir. 2003).  
Cal.—Hatch v. Superior Court, 80 Cal. App. 4th 170, 94 Cal. Rptr. 2d 453 (4th Dist. 2000), as modified on denial of reh'g, (Apr. 26, 2000).
- 6 Okla.—Edmondson v. Pearce, 2004 OK 23, 91 P.3d 605 (Okla. 2004), as corrected, (July 28, 2004).  
Cal.—In re Juan C., 28 Cal. App. 4th 1093, 33 Cal. Rptr. 2d 919 (2d Dist. 1994).
- 7 U.S.—Miller v. Reed, 176 F.3d 1202, 163 A.L.R. Fed. 739 (9th Cir. 1999).
- 8 Ill.—Guerrero v. Ryan, 272 Ill. App. 3d 945, 209 Ill. Dec. 408, 651 N.E.2d 586 (1st Dist. 1995).  
Neb.—State v. Meints, 223 Neb. 199, 388 N.W.2d 813 (1986).  
N.Y.—Kaehny v. Lynn, 172 Misc. 2d 295, 659 N.Y.S.2d 388 (Sup 1997).
- 9 U.S.—Jones v. Helms, 452 U.S. 412, 101 S. Ct. 2434, 69 L. Ed. 2d 118 (1981).  
Ga.—Davis v. State, 248 Ga. 783, 286 S.E.2d 430 (1982).  
Mass.—Com. v. George, 430 Mass. 276, 717 N.E.2d 1285 (1999).

- Wash.—State v. McBride, 74 Wash. App. 460, 873 P.2d 589 (Div. 3 1994).  
10 Ill.—People v. Laughlin, 293 Ill. App. 3d 194, 227 Ill. Dec. 680, 687 N.E.2d 1162 (2d Dist. 1997).  
11 U.S.—Pelland v. Rhode Island, 317 F. Supp. 2d 86 (D.R.I. 2004).  
Cal.—In re Antonio R., 78 Cal. App. 4th 937, 93 Cal. Rptr. 2d 212 (4th Dist. 2000).  
12 Mich.—People v. Roth, 154 Mich. App. 257, 397 N.W.2d 196 (1986).  
Cal.—People v. Smith, 152 Cal. App. 4th 1245, 62 Cal. Rptr. 3d 316 (2d Dist. 2007).

13 **Juvenile living in Mexico**

Conditions of probation imposed on a juvenile, after his adjudication as a ward for smuggling marijuana from Mexico, forbidding the juvenile from entering the United States except to attend school, to work, or to visit his family, violated the juvenile's rights to freedom of travel, association, and assembly; the conditions were not narrowly drawn but covered the entire United States, and were not tailored to the juvenile's social situation since the juvenile lived with his mother in Mexico, did not work or attend school, and had a bad relationship with his father in the United States.

- Cal.—Alex O. v. Superior Court, 174 Cal. App. 4th 1176, 95 Cal. Rptr. 3d 438 (4th Dist. 2009).  
14 U.S.—Williams v. Wisconsin, 336 F.3d 576 (7th Cir. 2003).  
15 U.S.—Califano v. Gautier Torres, 435 U.S. 1, 98 S. Ct. 906, 55 L. Ed. 2d 65 (1978).

**Absentee ballot**

Statutory provisions precluding a former state resident currently residing in Puerto Rico from voting via absentee ballot in a presidential election did not violate the voter's right to travel; loss of the right to vote for president was a consequence of the voter's decision to become a citizen of the territory in a constitutional scheme that allocated the right to appoint electors to states but not to territories, and the laws did not impair the voter's opportunity to be treated equally in Puerto Rico.

- U.S.—Romeu v. Cohen, 265 F.3d 118, 1 A.L.R. Fed. 2d 639 (2d Cir. 2001).  
Idaho—Gordon v. State, 108 Idaho 178, 697 P.2d 1192 (Ct. App. 1985).  
Ala.—Snavely v. City of Huntsville, 785 So. 2d 1162 (Ala. Crim. App. 2000).  
Ky.—Bess v. Bracken County Fiscal Court, 210 S.W.3d 177 (Ky. Ct. App. 2006).  
Me.—State v. Elliott, 2010 ME 3, 987 A.2d 513 (Me. 2010).  
N.C.—State v. Dobbins, 277 N.C. 484, 178 S.E.2d 449 (1971).

**Curfew on minors**

- Iowa—City of Panora v. Simmons, 445 N.W.2d 363, 83 A.L.R.4th 1035 (Iowa 1989).  
Wis.—City of Milwaukee v. K.F., 145 Wis. 2d 24, 426 N.W.2d 329 (1988).  
18 N.C.—State v. Dobbins, 277 N.C. 484, 178 S.E.2d 449 (1971).  
19 U.S.—Berrigan v. Sigler, 358 F. Supp. 130 (D.D.C. 1973), judgment aff'd, 499 F.2d 514, 18 Fed. R. Serv. 2d 1081 (D.C. Cir. 1974).  
20 U.S.—Haig v. Agee, 453 U.S. 280, 101 S. Ct. 2766, 69 L. Ed. 2d 640 (1981).  
21 U.S.—Haig v. Agee, 453 U.S. 280, 101 S. Ct. 2766, 69 L. Ed. 2d 640 (1981).